

**OPINION
61-171**

October 3, 1961 (OPINION)

PUBLIC RECORDS

RE: Microfilm - Admissible as Evidence

This is in reply to your letter of September 28, 1961, in which you request the opinion of this office as to the legality of motor vehicle titles that are microfilmed. Your question is: "Would they be legal in court or for reference?" You also ask if motor vehicle titles that have been microfilmed could be destroyed.

Section 31-08-01.1 of the North Dakota Century Code provides:

PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS ADMISSIBLE IN EVIDENCE. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original."

in reply to your first question, it is our opinion that motor vehicle titles which have been microfilmed are admissible in court and may be used for reference in accordance with the provisions of section 31-08-01.1 of the North Dakota Century Code, quoted above.

With regard to your second question, we note that section 31-08-01.1 provides that if the documents are microfilmed the original may be destroyed unless it is "held in custodial or fiduciary capacity or unless its preservation is required by law." Section 46-04-20 of the 1961 Supplement to the North Dakota Century Code provides:

DESTRUCTION OF PUBLIC RECORDS. When authorized by the secretary of state in his capacity as state records administrator, any state department, agency, board, bureau, or commission may destroy all unnecessary records, documents, and

correspondence, excepting such documents which might be or become valuable as historical records or documents; provided that no document, record or correspondence shall be destroyed which might be evidence in any civil or criminal action or proceedings, until the statute of limitations applicable thereto shall bar such action or proceeding in which such document or record might be evidence. For the purposes of this section, the period of the statute of limitations shall be deemed to commence upon the date of preparation, execution, or filing of any record, whichever date is the latest."

Under section 46-04-20 of the 1961 Supplement to the North Dakota Century Code, the final decision as to what records, documents and correspondence may be destroyed rests with the secretary of state in his capacity as state records administrator. You will note that records which might be or become valuable as historical records or documents are not to be destroyed nor are those records, documents or correspondence which might be evidence in any civil or criminal action or proceedings to be destroyed until the statute of limitations applicable thereto shall bar such action or proceeding in which such document or record might be evidence.

It is impossible for this office to state, as a matter of law, that motor vehicle titles will or will not become valuable as historical records or documents although it would appear to be a rare situation in which any specific motor vehicle title would be valuable as a historical record or document. Insofar as the question of retaining these titles as evidence in any civil or criminal action is concerned, it is our opinion that since those titles which are microfilmed are admissible in any judicial or administrative proceeding under the provisions of section 31-08-01.1 of the North Dakota Century Code, the original titles need not be retained as evidence.

LESLIE R. BURGUM

Attorney General